

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KRYSTAL L. PENA, Plaintiff, v. COMMISSIONER OF SOCIAL SECURITY, Defendant.	2:19-cv-10670 HON. TERRENCE G. BERG ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION AND REMANDING CASE
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Krystal Pena filed this action pursuant to 42 U.S.C. § 405(g) appealing the Social Security Administration’s denial of her applications for disability insurance benefits and supplemental security income under the Social Security Act. The parties each filed motions for summary judgment. Pena requests that this case be remanded to the Social Security Administration for further proceedings consistent with sentence four of 42 U.S.C. § 405(g), which gives the district court power to “enter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” *See* ECF No. 14. On sentence-four remand, the administrative law judge retains the discretion to grant or deny a benefits award. *Turner v. Comm’r of Social Sec.*, 680 F.3d 721, 723 (6th Cir. 2012). Defendant, the Commissioner of Social Security, in turn

moved for summary judgment in his favor on the basis that the Commissioner has rendered a final decision on benefits supported by substantial evidence. ECF No. 16. Magistrate Judge David R. Grand issued a Report and Recommendation on the cross-motions for summary judgment pursuant to 28 U.S.C. § 636(b)(1)(B). He determined that the administrative law judge's conclusion that Pena is not disabled within the meaning of the Social Security Act is in fact not supported by substantial evidence. ECF No. 18, PageID.1228 (Report and Recommendation). Accordingly, Magistrate Judge Grand recommends that the Commissioner's motion for summary judgment be denied and Pena's motion for summary judgment granted in part to the extent it seeks remand and denied in part to the extent it seeks an award of benefits. The Court agrees and will accordingly adopt the Report and Recommendation and remand this case to the administrative law judge for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

The Court has reviewed the Magistrate Judge's Report and Recommendation on the parties' respective motions for summary judgment, as well as the motions themselves and Pena's response.¹ The law provides that either party may serve and file written objections "[w]ithin fourteen days after being served with a copy" of the report and recommendation. 28 U.S.C. § 636(b)(1). As of this date, neither party has

¹ The Social Security Commissioner did not file any response to Pena's motion for summary judgment.

filed any objections to Magistrate Judge Grand's Report and Recommendation. The district court will make a "*de novo* determination of those portions of the report . . . to which objection is made." *Id.* But where, as here, neither party objects to the report, the district court is not obligated to independently review the record. *See Thomas v. Arn*, 474 U.S. 140, 149–52 (1985). The Court will therefore accept the Magistrate Judge's Report and Recommendation of November 20, 2019 as this Court's findings of fact and conclusions of law.

Accordingly, it is hereby **ORDERED** that Magistrate Judge Grand's Report and Recommendation of November 20, 2019 (ECF No. 18) is **ACCEPTED** and **ADOPTED**. It is further ordered that the Commissioner of Social Security's motion for summary judgment (ECF No. 16) is **DENIED**, and Krystal Pena's motion for summary judgment (ECF No. 14) is **GRANTED** in part to the extent it seeks remand and **DENIED** in part to the extent it seeks an award of benefits. This case will be **REMANDED** to the administrative law judge as provided by 42 U.S.C. § 405(g) for further proceedings consistent with Magistrate Judge Grand's Report and Recommendation.

SO ORDERED.

Dated: December 30, 2019

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE